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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,158	12/14/2000	Mitch A. Williams	10559-368001	8205
20985	7590	05/02/2005	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			TRUONG, LECHI	
			ART UNIT	PAPER NUMBER
			2194	

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,158

Applicant(s)

WILLIAMS, MITCH A.

Examiner

LeChi Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-19,21-27 and 29 is/are rejected.
- 7) ☐ Claim(s) 3, 20, 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1- 29 are presented for examination.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-8 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter.
3. Claim 1 is directed to method steps, which can be practiced mentally in conjunction with pen and paper, therefore they are directed to non-statutory subject matter. Specifically, as claimed, it is uncertain what performs each of the claimed method steps. Moreover, each of the claimed steps, inter alia, determining, controlling , can be practiced mentally in conjunctions with pen and paper. The claimed steps do not define a machine or computer implemented process (see MPEP 21061. Therefore, the claimed invention is directed to non-statutory subject matter. (The examiner suggests applicant to change "method" to "computer implemented method" in the preamble to overcome the outstanding 35 U.S.C. 101 rejection).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4, 5, 9-12, 16-19, 23, 24, 26, 27, 29 are rejected under 35 U.S.C.

103(a) as being unpatentable over Parry (US. Patent 5,710,941) in view of Admitted Prior APA (APA)

3. As to claim 1, Parry teaches the invention substantially as claimed including:

driver (the real mode hard disk driver 48, col 7, ln 60-65), determining whether an intermediate driver is presented in memory (which transfer mode is utilized by real mode hard disk driver 58, col 7, ln 60-65 / since transfer mode is utilized by real mode hard disk driver 58, the real mode hard disk driver must be presented in the memory, adaptively control . . . based on whether an driver is presented in memory(if protected mode driver 48 utilizes 50 determines that real mode hard disk driver 48 utilizes the 32 bit PIO data transfer mode, protected mode hard disk driver 50 then set a flat, col 11, ln 33-38/ a transfer mode which is utilized by real mode hard disk driver 48 also reliably can be used by protected mode hard disk driver 50, col 7, ln 60-65 ).

4. Parry does not explicit teach the term intermediate for the driver. However, APA teaches an intermediate driver (an intermediate driver, page 3 to page 4), a persistency (persistent mode, page 4, ln 10-24).

It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching Parry and APA because APA's an intermediate driver, persistent mode, would manage the process of selecting an available network-interface card and communicating with the device driver for that card.

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6. As to claim 2, APA teaches intermediate (an inter-mediate driver, page 3 to page 4).
7. As to claim 4, APA teaches non-persistent (non-persistent mode, page 2, ln 16-19).
8. As to claim 5, APA teaches device drive (the device driver, page 4), persistent (Persistent, page 4), an intermediate driver (an intermediate driver, page3, ln 10-23), memory (memory, page 4).
9. As to claim 9, Parry teaches a device driver (protect mode hard disk driver 50, col 7, ln 60-65), determining (determine, col 7, ln 60-65), an driver (the real mode hard disk driver 48, col 7, ln 60-65), determining whether an intermediate driver is presented in memory (which transfer mode is utilized by real mode hard disk driver 58, col 7, ln 60-65 / since transfer mode is utilized by real mode hard disk driver 58, the real mode hard disk driver must be presented in the memory), adaptively control. . . based on whether an driver is presented in memory a transfer mode which is utilized by real mode hard disk driver 48 also reliably can be used by protected mode hard disk driver 50, col 7, ln 60-65 ).
10. Parry does not explicit teach the term intermediate for the driver, persistency, network interface card. However, APA teaches an intermediate driver (an intermediate driver, page 3 lo page 4), a persistency (persistent mode, page 4, ln 10-24), network interface card (network-interface card, page 3, page 4).
11. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching Parry and APA because APA's an

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intermediate driver, persistent mode, network interface card would provide the valuable interface for a variety of manufacturers of their implementation.

12. **As to claim 10**, APA teaches an intermediate driver (an intermediate driver, page 3 to page 4), memory (memory, page 4), a persistency (persistent mode, page 4, In 10 24), a device driver (a device driver, page 4).

13. **As to claims 11, 12**, they are apparatus claims of claims 4, 2; therefore, they are rejected for the same reasons as claims 4, 2 above.

14. **As to claim 16**, it is apparatus claim of claims 1, 2; therefore, it is rejected for the same reasons as claims 1, 2 above.

15. **As to claims 17, 18, 19**, they are apparatus claims of claims 2, 4, 5; therefore, they are rejected for the same reasons as claims 2, 4, 5 above.

16. **As to claims 23, 24, 26, 27, 29**, they are apparatus claims of claims 1, 4, 2, 5, 10; they are rejected in the same reasons as claims 1, 4, 2, 5, 10 above.

17. **Claims 6-8, 13-15, 21-22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Parry (US. Patent 5,710,941) in view of Admitted Prior Art (APA) and further in view of Spurlock (US. Patent 5,581,766).

18. **As to claim 6**, Parry and APA do not teach pre-specified. However, Spurlock teaches pre-specified (configuration specific video device, col 6, ln 1-50, col 3, ln 44-48).

19. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Parry, APA and Spurlock because Spurlock's configuration specific video device would make the control of device driver persistency more consistent.

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20. As to **claim 7**, Spurlock teaches a default persistency (default, the generic video driver is loaded in the same manner ms the application specific video driver, col 6, ln 1-50).

21. As to **claim 8**, Spurlock teaches automatic control (automatically, col 3, ln 40-48/ col 4, ln 64-67).

22. As to **claims 13, 14**, Spurlock teaches configuration data, pre-specified (the configuration-specific video driver, col 6, ln 1-50).

23. As to **claim 15**, Spurlock teaches configuration data comprises instructions to disable automatic (automatically selecting, an appropriate video system for automatically current video system configuration, col 8, ln 32-37).

24. As to **claims 21-22**, they are apparatus claims of claims 7 and 15; Therefore, they are rejected for the same reasons as claims 7, 15.

25. Claim is **25** are rejected tmder 35 U.S.C. 103(a) ms being unpatentable over Parry (US. Patent 5,710,941) in view of Admitted Prior Art (MA) and further in view of Kim (Method for performing inter-shared memory).

26. As to **claim 25**, Parry teaches receiving a message, a calling process (col 8, ln 10-15/ col 7, ln 55-65/ col 14, ln 17-23).

27. Parry and APA do not teach an event control block. However, Kim teaches an event control block (an event control block, page 1).

28. It would have been obvious to one of the ordinary skill in the art at the time the invention was made to combine the teaching of Parry, APA and Kim because Kim's event

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control block would provide information of an event control block, which needs to send or receive a packet tailored to the needs of application.

***Allowable Subject Matter***

Claims 3, 20, 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Response to the argument:**

29. Applicant amendment filed on 9/03/04 has been considered but they are not persuasive:

Applicant argued in substance that :

(1) “ Parry alone or in combination with the admitted prior art does not teach or suggest , “ adaptively controlling a persistency of a device driver”.

(2) “ the Prior art does not neither discloses nor suggest setting the persistency status “ on the basis of said calling process”.

30. Examiner respectfully disagreed with Applicant's remarks:

As to the point (1), Parry teaches if protected mode driver 48 utilizes 50 determines that real mode hard disk driver 48 utilizes the 32 bit PIO data transfer mode, protected mode hard disk driver 50 then set a flag to indicate that 32-bit PIO data transfer mode also is available for its use when it substitutes for real mode hard disk driver, col 11, ln 33-38).

As to the point(2), Parry teaches which transfer mode is utilized by real mode hard disk driver 58, col 7, ln 60-65 / since transfer mode is utilized by real mode hard disk driver 58, the real mode hard disk driver must be presented in the memory.



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***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to LeChi Truong whose telephone number is ( 571) 272 3767. The examiner can normally be reached on 8 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIP. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIP system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

LeChi Truong

April 27, 2005

  
**SUE LAO**  
**PRIMARY EXAMINER**